

RECEIVED & INSPECTED
SEP 25 2002
FCC - MAILROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Qwest Communications International, Inc.)
Consolidated Application for Authority to) WC Docket No. 02-189
Provide In-Region, InterLATA Services in)
the States of Montana, Utah, Washington)
and Wyoming)

REPLY COMMENTS OF
WORKING ASSETS FUNDING SERVICE, INC.
dba WORKING ASSETS LONG DISTANCE

Working Assets Funding Service, Inc. dba Working Assets Long Distance
("Working Assets") hereby submits reply comments opposing the above-captioned
application of Qwest Communications International, Inc. ("Qwest") to provide in-region,
interLATA services in Montana, Utah, Washington and Wyoming.¹ Qwest's business
practices and management decisions raise serious doubts that grant of its application
under Section 271 of the Communications Act of 1934, as amended, would be in the
public interest. At a minimum, the Commission should defer action on Qwest's
application until the business practices and corporate culpability issues surrounding
Qwest have been resolved.

Qwest's schemes involving secret, discriminatory interconnection arrangements
and existing violations of Section 271 have already been described and documented in

¹ Working Assets is one of the few long distance resellers in the country primarily serving the
residential market. Working Assets is a socially responsible company that donates a portion of its profits to
various progressive causes and participates in a number of ways in advocacy campaigns on issues of
interest to its customers.

comments filed in this proceeding. See, e.g., Comments of Pilgrim Telephone, Inc. at pp. 4-8; Comments of AT&T Corp. at pp. 133-147; Comments of McLeodUSA Telecommunications Services, Inc. at pp. 3-5. In fact, Qwest's difficulties run deeper and only continue to mount. In July, the U.S. attorney's office in Denver initiated a criminal investigation against Qwest. *Associated Press*, July 10, 2002 ("Troubled communications giant Qwest says it is under investigation by U.S. attorney"). The Senate Commerce, Science and Transportation Committee also just recently conducted hearings on the behavior of executives at Qwest, WorldCom, Inc. and Global Crossing, Ltd. See *Telecommunication Reports*, "Senate Declares Open Season on Executive Fraud", August 5, 2002, p. 2.

These most recent developments are only the latest in a litany of investigations of and complaints against Qwest. Qwest has already been the subject of two Securities and Exchange Commission ("SEC") investigations into its accounting practices – an investigation into the use of *pro forma* earnings statements and expense data in its 2000 financial reports, and an investigation into its accounting treatment of network capacity swaps with other telecommunications companies.² Qwest has said it plans to restate its earnings for 1999, 2000 and 2001 because it used "incorrect" accounting for certain sales of network capacity. *Washington Post*, "Qwest Likely to Restate Earnings", July 29, 2002, p. A20. Yet in 2001, one of the years for which Qwest will restate its earnings, Joseph P. Nacchio, Qwest's chief executive until he was forced to resign in June 2002, made \$101.9 million in salary, bonus, long-term incentive pay, exercise of options and

² The SEC "has been particularly interested in a controversial 11th-hour deal between Enron and Qwest last fall." *TheStreet.com*, "Criminal Probe News Cuffs Qwest", July 10, 2002.

other compensation.³ Upon his ouster, Mr. Nacchio received an additional \$10 million bonus. As Sen. Byron Dorgan stated in the recent Senate hearings, “When somebody cooks the books the last thing you do is give him incentive pay.”⁴ Given this history of mismanagement and financial impropriety, the accuracy of Qwest’s financial and operational reporting systems used to justify its application must be questioned.

Qwest’s treatment of its customers and potential customers is no less troublesome. Qwest recently entered into a settlement with the Colorado Attorney General to close a complaint proceeding alleging improper sales tactics such as cramming unauthorized services on bills and failing to fully disclose prices and terms. *Communications Daily*, August 16, 2002. Since 1999, Qwest has settled deceptive sales complaints in 12 other states. *Id.* In December 2001, the California Public Utilities Commission fined Qwest \$38 million for slamming, cramming and other improper marketing activities. *Investigation on the Commission’s Own Motion into the Operations, Practices and Conduct of Qwest Communications Corporation*, I00-11-052, Order Finding Violations and Imposing Sanctions, December 5, 2001.

In light of all of these irregularities and questionable practices, Working Assets believes it would be prudent for the Commission to delay its decision until all of the relevant facts have been revealed and the Commission can be assured that its decision will be based on accurate, complete and reliable information. To accomplish this, the

³ *Washington Post*, “Qwest Discloses Accounting Investigation by U.S. Attorney”, July 11, 2002, p. E3. See also Qwest Schedule 14A, Definitive Proxy Statement, filed with the SEC April 9, 2002.

⁴ *Telecommunications Reports*, Vol. 68, No. 31, “Senate Declares Open Season on Executive Fraud”, August 5, 2002, p. 3.

Commission should seek additional confirmation that information provided by Qwest in support of its application has either been verified by an independent source, will be verified by an independent source, or is reliable and trustworthy in the absence of such independent verification. The public deserves that consideration.

Given the level of corporate misconduct being reported recently in this country, together with the fragile state of the telecommunications industry as a whole, Working Assets believes that this Commission should proceed carefully rather than hastily before it rewards a company at the center of so many allegations of misconduct. Consumers will benefit very little from another long distance carrier being added to the fray based on a decision that disregards the plethora of damaging information about the applicant. Consideration of Qwest's application should, at the very least, be postponed until Qwest's new management can demonstrate its financial and operational integrity.

Respectfully submitted,

/s/

Theresa Fenelon Falk

PILLSBURY WINTHROP LLP
50 Fremont Street
San Francisco, CA 94105
(415) 983-1000

*Counsel for Working Assets Funding
Service, Inc. dba Working Assets Long
Distance*

August 26, 2002

CERTIFICATE OF SERVICE

I, Theresa Fenelon Falk, hereby certify that I am counsel to the law firm of Pillsbury Winthrop LLP, and that on this 26th day of August, 2002, I caused to be sent by first class United States mail, postage prepaid, a copy of the foregoing **REPLY** **COMMENTS OF WORKING ASSETS FUNDING SERVICE, INC. dba WORKING ASSETS LONG DISTANCE** to the following:

Janice Myles*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C327
Washington, DC 20554

Qualex International
Portals II, Room CY-B402
445 12th Street, SW
Washington, DC 20554

Ryan Harsch
United States Department of Justice
Antitrust Division, Telecommunications and
Media Enforcement Section
1401 H Street, NW, Suite 8000
Washington, DC 20530

R. Steven Davis
Dan L. Poole
Andrew D. Crain
John L. Munn
Lynn A. Stang
Melissa X. Newma
Qwest Communications International, Inc.
1801 California Street, Suite 4700
Denver, CO 80202

Peter A. Rohrbach
Mace J. Rosenstein
Linda Oliver
David L. Sieradzki
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
*Counsel for Qwest Telecommunications
International, Inc.*

* Fifteen copies

Steve Vick
Utility Division Administrator
Montana Public Service Commission
PO Box 202601
Helena, MT 59620

Julie Orchard
Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504

Stephen G. Oxley, Chief Counsel
Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, WY 82002

Lori E. Wright
Lisa B. Smith
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Marc A. Goldman
Jenner & Block, LLC
601 13th Street, NW, Suite 1200
Washington, DC 20005
Counsel for WorldCom, Inc.

K. Megan Doberneck
Praveen Goyal
Jason D. Oxman
Covad Communications Company
600 14th Street, NW, Suite 750
Washington, DC 20005

Karen L. Clausen
Eschelon Telecom, Inc.
730 2nd Avenue So., Suite 1200
Minneapolis, MN 55402

Andrew D. Lipman
Patrick J. Donovan
Rogena Harris
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for OneEighty Communications, Inc.

Mark C. Rosenblum
Lawrence J. Lafaro
Richard A. Rocchini
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

David A. Lawson
Mark Schneider
R. Merinda Wilson
James P. Young
Richard E. Young
Christopher T. Schenk
Sidley Austin Brown & Wood, LLP
1501 K Street, NW
Washington, DC 20005
Counsel for AT&T Corp.

Patrick J. Donovan
Rogena Harris
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
*Counsel for Integra Telecom of Utah, Inc. and
Integra Telecom of Washington, Inc.*

Walter Steimel, Jr.
Greenberg Traurig, LLP
800 Connecticut Ave., NW, Suite 500
Washington, DC 20006
Counsel for Pilgrim Telephone, Inc.

Brooks E. Harlow
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101
*Counsel for the Northwest Public
Communications Council*

David R. Conn
McLeodUSA Telecommunications Services, Inc.
McLeodUSA Technology Park
6400 C Street, SW
Cedar Rapids, IA 52406

Debbie Goldman
George Kohl
Communications Workers of America
501 Third Street, NW
Washington, DC 20001

Marybeth M. Banks
H. Richard Juhnke
Sprint Communications Company, LP
401 9th Street, NW, Suite 400
Washington, DC 20004


Theresa Fenelon Falk